

SECOND REGULAR SESSION

SENATE BILL NO. 949

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR STEELMAN.

Pre-filed December 15, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

2722S.011

AN ACT

To repeal section 621.015, RSMo, and to enact in lieu thereof four new sections relating to environmental hearings, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 621.015, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 621.015, 640.805, 640.815, and 640.825, to read as follows:

621.015. The "Administrative Hearing Commission" is assigned to the office of administration. It shall consist of no more than **[three] four** commissioners. The commissioners shall be appointed by the governor with the advice and consent of the senate. **One commissioner shall have an interest in and knowledge of environmental issues.** The term of each commissioner shall be for six years and until his successor is appointed, qualified and sworn. The commissioners shall be attorneys at law admitted to practice before the supreme court of Missouri, but shall not practice law during their term of office. Each commissioner shall receive annual compensation of fifty-one thousand dollars plus any salary adjustment provided pursuant to section 105.005, RSMo. Each commissioner shall also be entitled to actual and necessary expenses in the performance of his duties. The office of the administrative hearing commission shall be located in the City of Jefferson and it may employ necessary clerical assistance, compensation and expenses of the commissioners to be paid from appropriations from general revenue made for that purpose.

640.805. 1. All authority to hear appeals of findings, orders, decisions or assessments on permits, licenses, registrations, administrative penalties, civil penalties, abatement orders, emergency orders, and any other actions that is granted to the director of the department of natural resources in chapters 260, 278, 444, 640, 643, and 644, RSMo, the hazardous waste management commission in

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall be transferred to the administrative hearing commission pursuant to chapter 621, RSMo.

2. Except as otherwise provided by law, any person or entity who is a party to, or who is affected by, any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section shall be entitled to a hearing before the administrative hearing commission by the filing of a petition with the administrative hearing commission within thirty days after any such finding, order, decision, or assessment is placed in the United States mail or within thirty days any such finding, order, decision, or assessment is delivered, whichever is earlier.

3. Any finding, order, decision, or assessment by the director of the department of natural resources or any commission for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section shall contain a notice of the right of appeal in substantially the following language:

"If you were adversely affected by this decision, you may appeal to the administrative hearing commission. To appeal, you must file a petition with the administrative hearing commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the administrative hearing commission."

4. For the purpose of determining whether documents are filed within the time allowed by law, documents transmitted to the administrative hearing commission by registered mail or certified mail shall be deemed filed with the administrative hearing commission as of the date shown on the United States Post Office records of such registration or certification and mailing. If the document is sent by any method other than registered mail or certified mail, the administrative hearing commission shall deem it to be filed on the date the administrative hearing commission receives it. When the last day prescribed for performing any act prescribed by this chapter or chapter 536, RSMo, falls on a Saturday, Sunday, or a legal holiday in this state, the performance of such act shall be timely if it is performed on the next succeeding day which is not a Saturday,

Sunday, or legal holiday.

5. The administrative hearing commission shall promulgate rules by January 1, 2004, regarding the procedures for hearing matters transferred pursuant to this section.

6. All matters heard by the administrative hearing commission pursuant to this chapter shall be governed by the provisions of chapter 536, RSMo, and shall take precedence over all other matters heard by the administrative hearing commission. Decisions of the administrative hearing commission pursuant to this section shall be rendered within sixty days of the completion of the hearing and binding subject to appeal by either party.

7. In the event the person filing the appeal prevails in any dispute pursuant to this section, interest shall be allowed upon any amount found to have been wrongfully collected or erroneously paid at the rate established by the director of the department of revenue pursuant to section 32.065, RSMo.

8. The administrative hearing commission shall make its decisions of matters heard pursuant to this section available to the public. The administrative hearing commission shall also retain transcripts of hearings of matters referred pursuant to this section.

9. The costs for hearing appeals pursuant to this section shall be paid as administrative costs from the respective funds of the boards or commissions from which the appeals are taken.

640.815. Except as otherwise provided by law, all final decisions of the administrative hearing commission shall be subject to judicial review pursuant to sections 536.100 to 536.140, RSMo. The right to judicial review as provided herein shall also be available to the department of natural resources and any commission listed in subsection 1 of section 640.805 aggrieved by a final decision of the administrative hearing commission.

640.825. In all matters heard by the administrative hearing commission pursuant to this chapter, the burden of proof shall be upon the department of natural resources or the commission listed in subsection 1 of section 640.805 that issued the finding, order, decision, or assessment being appealed, except that in matters involving the denial of a permit, license, or registration, the burden of proof shall be on the applicant for such permit, license, or registration.

Section B. The repeal and reenactment of section 621.015 and the enactment of sections 640.805, 640.815, and 640.825 of this act shall become effective January 1, 2005.